

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY JAKARTA
INFO AMEMBASSY TOKYO

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E.O. 11652: N/A

TAGS: CPRS, EINV, ID

SUBJECT: FOREST PRODUCTS CORP. COMPLAINT

REF: JAKARTA 7561

1. SUBSTANCE REFTEL PASSED TO PEDERSEN WHO PROFESSED NON-SURPRISE AT DIRECTOR GENERAL OF FORESTRY'S UNAVAILABILITY. HE WAS UNAWARE THAT STORY HAD BEEN CARRIED IN JAKARTA PAPER.
 2. PEDERSEN AND HIS LAWYERS (NOT CONNALLY'S FIRM WHICH APPARENTLY DECLINED JOB BECAUSE IT REPRESENTS PERTAMINA) REPORT THAT THEIR ACTION TO RECOVER DAMAGES AGAINST THREE MITSUI FIRMS AND TELAGA MAS UNDER SECTIONS 1 AND 2 OF SHERMAN ACT AND SECTION 4 OF CLAYTON ACT WAS FILED JUNE 19 IN U.S. DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION. MAIN PETITION, AS MENTIONED IN REFTEL, IS FOR 194.7 MILLION DOLLARS IN DAMAGES FROM ALL DEFENDANTS. ALTERNATIVELY, THEY SEEK 43.4 MILLION
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DAMAGES FROM TELAGA MAS FOR ANTICIPATED PROFITS LOST BECAUSE OF BREACH OF CONTRACT BY TELAGA MAS. ALTERNATIVELY TO 194.7 MILLION DOLLAR PETITION, BUT IN ADDITION TO 43.4 MILLION DOLLAR PETITION, FOREST

PRODUCTS ALSO SEEKS 86.8 MILLION DOLLARS JUDGMENT AGAINST

mitsui for its alleged interference with its contract with Telaga Mas. Alternatively to all these petitions, plaintiffs seek actual and punitive damages for conversion of their property; since conversion alleged to be still ongoing, minimum value so far of damages sought is 24 million dollars. Jury trial has been requested. Copy of legal document filed in Houston court has been pouched to Jakarta.

3. Mitsui has until July 9 to file papers seeking an opportunity to present arguments against holding of trial. Pedersen lawyer (Pannill) does not think claim that court lacks jurisdiction will "float" but he opined that Mitsui counsel would have other arguments available to it to contest formal trial. He thought it might be six months before hearings were held to determine whether trial should be scheduled. (If court decided that trial should be held, it might be another year before trial actually opened, during which time motions would be filed for documents and written interrogatories, some of which could involve Indonesians.)

4. Pannill stated there may be substantial delay in filing of arbitration proceedings with ICSID, even though July 1, 1971 forestry agreement between Forest Products, Telaga Mas, and GOI Director General of Forestry provided for such filing, and in lawyer's opinion, implicitly carried GOI's prior consent to arbitration. Lawyer noted that any settlement reached with GOI as result of arbitral decision (such as reinstatement of forestry agreement of July 1, 1971) would considerably reduce damages which Forest Products could claim against Mitsui.

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5. Forest Products counsel observed that no wrongdoing on part of GOI is asserted in suit. Bribery of Indonesian lower court judge mentioned by Pedersen is not vital issue in Forest Products' petition, lawyer said; besides, Pedersen's evidence of this is apparently only inferential. Petition refers to "fraudulent decisions of district judge" which were obtained through presentation of "false evidence and testimony."

6. Pannill went on to say assertion could not be made that GOI has refused to implement decision of its

COURTS. STRICTLY SPEAKING, NO COMPLAINT HAS EVER BEEN

FILED IN INDONESIAN COURTS TO REQUIRE GOI FORESTRY DEPARTMENT TO REINSTATE 1971 FORESTRY AGREEMENT. NOR ARE THERE PLANS AT PRESENT TO FILE SUIT IN INDONESIAN COURTS AGAINST EITHER GOI OR TELAGA MAS FOR BREACH

OF CONTRACT. SUIT AGAINST MITSUI IN INDONESIAN COURTS FOR VIOLATION OF INDONESIAN FORESTRY LAWS IS NOW BEING STUDIED, HOWEVER. BRIBERY OF JUDGE WOULD PROBABLY BE ALLEGED. DR. S. GAUTAMA, SAID TO BE KNOWN TO EMBASSY, HAS BEEN ASKED TO JOIN SOELISTIO AS CONSULTANT.

7. WHEN ASKED WHY FOREST PRODUCTS HAS NOT INITIATED ACTION IN INDONESIAN COURTS TO COMPEL DIRECTOR GENERAL OF FORESTRY TO REINSTATE 1971 FORESTRY AGREEMENT, PEDERSEN REPLIED THAT UP TILL NOW HE WAS RELYING ON FORESTRY DIRECTOR GENERAL SOEDJARWO TO HONOR HIS WORD TO COUNSEL SOELISTIO TO REVALIDATE AGREEMENT ONCE INDONESIAN COURTS DECLARED JUNE 13 AND 27, 1972 CENTRAL JAKARTA DISTRICT COURT DECISIONS NULL AND VOID. APRIL 23, 1975 SOELISTIO LETTER TO SOEDJARWO REPEATED REQUEST FOR REVALIDATION. LETTER STILL UNANSWERED. PEDERSEN NOW HESITATES TO EMBARK UPON ANOTHER LONG PERIOD OF LITIGATION. (FOREST PRODUCTS FIRST FILED SUIT TO HAVE COURT DECISIONS DECLARED INVALID ON MAY 1, 1973. IT WAS NOT UNTIL DECEMBER 2, 1974 -- 17 MONTHS LATER -- THAT TELAGA MAS LET PASS LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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ITS FINAL DEADLINE FOR APPEALING COURT DECISION IN FOREST PRODUCTS' FAVOR.)

8. PEDERSEN STATES HE HAS ADVISED INDONESIAN EMBASSY COUNSELOR ADIWOSO OF FOREST PRODUCTS SUIT AGAINST MITSUI AND OF HICKENLOOPER AMENDMENT IMPLICATIONS OF FORESTRY DIRECTOR'S FEBRUARY 19, 1973 CANCELLATION OF 1971 AGREEMENT. ADIWOSO HAS REPORTEDLY TALKED WITH FOREST PRODUCTS' COUNSEL IN JAKARTA, SOELISTIO, AND PRESUMABLY WILL TALK WITH GOI OFFICIALS TO GET MORE BACKGROUND.

9. CASE HAS DEVELOPED NEW ASPECT. JAMES ROOSEVELT AND OTHER FOREST PRODUCTS SHAREHOLDERS ARE APPARENTLY KEENLY INTERESTED IN BRINGING THEIR GRIEVANCES AGAINST MITSUI TO ATTENTION OF SENATOR CHURCH'S SUBCOMMITTEE ON MULTINATIONAL CORPORATIONS. THEY BELIEVE CHURCH SUBCOMMITTEE HAS BEEN REMISS IN FAILING TO DISCLOSE ROLE OF JAPANESE COMPANIES IN BIDDING UP BRIBERY EXPECTATIONS OF THIRD COUNTRY OFFICIALS

FROM OTHER FOREIGN BUSINESSMEN, INCLUDING AMERICANS. ALLEGED ACTIONS OF MITSUI IN INDONESIA WOULD BE EXCELLENT EVIDENCE OF THIS, THEY BELIEVE. PEDERSEN REPORTS HE HAS RECEIVED SEVERAL UNSOLICITED EXPRESSIONS OF MORAL SUPPORT FROM U.S. COMPANIES FOR HIS FILING OF SUIT AGAINST MITSUI. HE ALSO ADMITS ANY TESTIMONY GIVEN BEFORE CHURCH SUBCOMMITTEE WOULD BE MUCH STRONGER IF CASE IN HOUSTON COURT WERE FURTHER ALONG.

10. LOS ANGELES TIMES RAN ARTICLE ON FOREST PRODUCTS CASE JUNE 29. WASHINGTON POST AND WALL STREET JOURNAL SAID TO BE CHECKING INTO STORY. PEDERSEN SAYS ALL THIS PRESS ACTIVITY HAS BEEN INITIATED BY NEWSPAPERS. FOREST PRODUCTS NOT ENCOURAGING THIS PUBLICITY, HE CLAIMS, SINCE FEDERAL JUDGE WOULD PROBABLY REACT NEGATIVELY.

11. FACT THAT FOREST PRODUCTS COMPLAINT IS NOW SUB JUDICE IN U.S. COURT DOES NOT LEGALLY PREVENT LIMITED OFFICIAL USE
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USG FROM SEEKING INFORMATION FROM GOI OFFICIALS ALLUDED TO IN FOREST PRODUCTS' SUIT AGAINST MITSUI.

12. EMBASSY IS REQUESTED TO CONSULT WITH SOELISTIO AS REQUIRED TO CHECK OUR UNDERSTANDING FROM LAWYER PANNILL OF LITIGATION STATUS (PARAS 6 AND 7 ABOVE) AND TO KEEP ABREAST OF DEVELOPMENTS. UNLESS IT SEEMS INAPPROPRIATE OR INEFFECTIVE, EMBASSY MIGHT ALSO CONTINUE SEEKING APPOINTMENT WITH SOEDJARWO. ALLUDED TO POTENTIAL WHICH FOREST PRODUCTS COMPLAINT HAS FOR SOURING AMERICAN INVESTORS AND CONGRESSIONAL

OPINION ON INDONESIA, EMBASSY COULD ASK SOEDJARWO WHETHER SOELISTIO MAY EXPECT AN ANSWER SOON TO HIS APRIL 23 LETTER AND FOR ANY OTHER COMMENTS HE MIGHT HAVE ON THIS CASE.

13. IN ANTICIPATION OF DEPARTMENT'S HAVING TO DETERMINE WHETHER HICKENLOOPER AMENDMENT MAY BE APPLICABLE TO THIS CASE, EMBASSY REQUESTED TO QUERY SOELISTIO CONCERNING LOCAL REMEDIES AVAILABLE TO FOREST PRODUCTS TO SECURE REVALIDATION OF 1971 AGREEMENT BY FORESTRY DIRECTOR GENERAL (E.G. MANDAMUS ACTION). INGERSOLL

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